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07-CV-05378-CMP

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, SEATTLE

MARK FERGUSON, a married  
individual, d/b/a WHEW.COM,

Plaintiff,

v.

ACTIVE RESPONSE GROUP, an  
New York company;  
THE BRADFORD EXCHANGE,  
LTD., an Illinois corporation;  
QUINSTREET, INC., a California  
corporation;  
VISION CARE HOLDINGS, LLC., a  
Florida Limited Liability Company;  
NAUTILUS, INC., a Washington  
corporation; and JOHN DOES, I-CC,

Defendants,

NO.

C07-5378 RJB

COMPLAINT FOR PENALTIES  
AND DAMAGES UNDER THE CAN-  
SPAM ACT OF 2003, THE  
WASHINGTON CEMA (RCW 19.190  
ET SEQ.) AND CPA (RCW 19.86);  
AND INJUNCTIVE RELIEF

[JURY DEMANDED]

PARTIES, JURISDICTION, VENUE

1. Plaintiff MARK FERGUSON d/b/a "WHEW.COM", (hereinafter "FERGUSON") is a married individual residing in Pierce County, Washington.
2. On information and belief, Plaintiff alleges that Defendant **ACTIVE RESPONSE GROUP**, ("ARG") is a corporation, with its principal places of business in the state New York, doing business as 'Oridian, Inc., tendollars.com, SavingsResults.com,

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -

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FERGUSON v. ACTIVE RESPONSE, ET AL.

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Phone/Fax: 888-839-3299

SEA 71020 S/ISS

Milesource.com, rewardsparade.com, myinsiderdeals.com, mygiftcardsource.com,  
 consumergiftgroup.com, nationalgiftgroup.com, bizcustomersupport.com,  
 MyGiftcardSource, LTDB Promotions, SilverNGold, Dealhighway,  
 ConsumerValueDirect, SmartBrands, BargainSpot, SavingsAvalanche, Deal-zone,  
 Couponandgifts, AskVinegarJoe, TVNewsDaily, AsmileADay, TensionBusters,  
 YourDailySmile, YourSelfDaily, YourtimeDaily, CelebRecipes,  
 EverydayFoodRecipes, FreeHouseholdProducts, SilverScreenSaver,  
 MyFreeBeautyProducts, MyInsiderDeals, SampleOnUs, SweepstakesEveryday,  
 PackageFromHeaven, SampleForYou, SurveysOnUs, GetTheLookOnUs,  
 IsYourPriceRight, holidayfoodrecipes, AnyTimeSavings, AvailableSavings,  
 ConsumerSurveyPolls, DailyRewardsWorld, DealsYouNeed, Education-programs-  
 online.info, FreshDealsToday, IntelligentShoppers, MyBestDealsToday,  
 OnlineSavingsCentral, TheSavingsList, YourBargainGrabber, YourFavoriteDeals,  
 SurveysAndSurveys, MorningSurveys, YourSurveyNow, MyPersonalBargains,  
 OfferGoldMine, DealsJustForYou, SmartDealsPlease, SavingsResults,  
 SpecialOffers4You, NationalGiftCenter, YourAmazingSurvey, LetTheDealsBegin,  
 ForSureDeals, ConvenientOffers, Deals2Inbox, theWOWrewards, TryOurDeals,  
 FindYourDealsOnline, TheDealsList, SelectYourDeals, Redcosmos, Greystarrysky,  
 Goldgeyser, Bicyclebear, Vastgreenfields, Hippohelper, householdsavingsclub.com';

3. On information and belief, Plaintiff alleges that Defendant **THE BRADFORD EXCHANGE, LTD.**, ("**BRADFORD EXCHANGE**") is a corporation, with its principal places of business in the state of ILLINOIS, doing business as 'THE BRADFORD GROUP, collectablestoday.com;
4. On information and belief, Plaintiff alleges that Defendant **QUINSTREET, INC.**, ("**QUINSTREET**") is a corporation, with its principal places of business in the state of CALIFORNIA, doing business as 'directdishsatellitety.info, bounce.saltlakefoundation.com, sundleride.com, pryedto.com, qabob.com, EZPROCREDIT.COM, dicerope.com, ritanel.com, snogfire.com, terrawrld.net, mx30.livingtimewise.com, mx40.mosterredfast.com, mx38.lostgreenmonkey.com,

CONTENTHARNESS.COM, mx45.nurotransmitertimes.com,  
 bounce.dediscipleswon.com, thelocalshangout.com, applicationsacceleration.com,  
 myperformancemanagement.net, mx54.redgrasstree.com, mx23.greenmouthpie.com,  
 mx50.orangelittlehand.com, mx5.bookltd13.info, arrivefriendly.com,  
 foggymorningair.com, betacorpinc.com, companyencryption.com,  
 takingbackcontrol.net, integratorplans.com, daybeamz.com,  
 uncompromisingactions.com, bleekmart.com, mx106.mydailyfree.net,  
 peakmount.com, missouri-accident-lawyers1.info, startovers.com, kenfaft.com,  
 rubbermatter.com, ownership-now.com, hniadvancedsystems.com, weblawz.com”;

5. On information and belief, Plaintiff alleges that Defendant **VISION CARE HOLDINGS, LLC (VISION CARE)** is a Limited Liability Company, with its principal places of business in the state of Florida, doing business as ‘visioncareholdings.com’;

6. On information and belief, Plaintiff alleges that Defendant **NAUTILUS, INC. (NAUTILUS)** is a corporation, with its principal places of business in the state of Washington, doing business as ‘Nautilus, Inc., nautilus.com, bowflex.com’, The Nautilus Group, Inc., expressedguarantee.com, outletstorez.com, ordinarydating.com, videotadz.com, hdecisionz.com, highsalez.com, highsalez.com, haloadz.com, opackpremium.com, over-buys.com, houseideasservices.com, hwabestproducts.com, origretail.com, inistock.com, onataserviceslimited.com, htainfo.com, stationaryprocess.com, olsik.com, iproductgroup.com, intgproblemsolvingcorp.com, hrdevelopz.com, openservicegroups.com, interactivefactorz.com, wholesalemartz.com’;

### Jurisdiction and Venue

7. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1332 (diversity).

- 1 8. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. §  
2 1367.  
3 9. Venue is proper pursuant to 28 U.S.C. §1391.

4 **General Allegations**

- 5 10. From at least January 2000 through June of 2007 Plaintiff FERGUSON provided and  
6 enabled email forwarding for multiple users on a computer server that provides email  
7 forwarding to wherever Plaintiff's clients needed, and domain registration and  
8 updating as Plaintiff's clients needed, site construction, hosting and maintenance as  
9 Plaintiff's clients needed.  
10 11. At all relevant times herein FERGUSON was an "internet access service" ("IAS") as  
11 defined under 15 USC 7702(11) and 47 USC 231(e)(4), and an "interactive computer  
12 service" ("ICS") under RCW 19.190.010(8).  
13 12. The email accounts hosted and served by Plaintiff IAS/ICS include email accounts  
14 owned by third-party customers of Plaintiffs' IAS/ICS, and also include email  
15 accounts owned by Plaintiff. The email addresses pertinent to the claims herein, and  
16 at which the emails alleged to be unlawful herein include:  
17 washington\_resident@whew.com; admin@whew.com; abuse@whew.com;  
18 collectively the "Email Addresses" and/or "Recipient Address" and individually and  
19 generically an "Email Address"  
20 13. At all times material hereto, for the Email Addresses and each of them, the  
21 information that at each of the Recipient Addresses belonged to Washington  
22 residents was and is available upon request from the registrant of the Whew.com  
23 domain, Ferguson being a Washington resident and Whew.com being registered with  
24 a Washington address.  
25 14. During the time period of approximately October 2006 through present, Plaintiffs  
received at the Email Addresses numerous electronic-mail messages sent and/or  
initiated by or on behalf of Defendants. (collectively the "Emails" or individually and  
generically as an "Email").

- 1 15. The Emails, and each of them, were received by Plaintiff and/or by Recipient  
2 Addresses provided by Plaintiff at the Whew.com domain.
- 3 16. Each of the Emails intentionally misrepresents and or obscures any and all  
4 information that could be used in identifying the point of origin or the transmission  
5 path thereof, contains header information that is materially false or materially  
6 misleading, fails to include, or contain a valid physical address in the body of the  
7 email or contains up to three addresses none of which identify the sender clearly and  
8 or conspicuously, fails to adequately identify the Emails as a commercial solicitation,  
9 each domain entered into the email intentionally uses a falsely registered or cloaked  
10 domain, each domain and or Emails fails to accurately identify the actual sender of  
11 the Emails in the "From" name line and or "Return Path" and or body; and/or was  
12 sent to and received at the Recipient Addresses subsequent to notice provided to  
13 Defendants to cease and desist sending unsolicited, unwanted, unlawful, and  
14 harassing Email.
- 15 17. Defendants initiated the transmission of the Emails, and each of them. In the  
16 alternative, Defendants conspired or otherwise acted in collusion with another or  
17 other, or assisted another or others to transmit the Emails, and each of them.
- 18 18. At all times material hereto, Defendants knew or had reason to know that the  
19 Recipient Addresses, and each of them, were and are held by a Washington resident.

20 **FIRST CAUSE OF ACTION – CAN-SPAM ACT**

21 **15 U.S.C. §7701 et seq.**

- 22 19. On the basis of the facts set forth hereinabove, Defendants initiated the transmission  
23 of the Emails, and each of them, to a protected computer in violation of 15 U.S.C.  
24 §7704(a), causing damage to Plaintiff FERGUSON as the provider of the Internet  
25 access service receiving each such Email, and entitling Plaintiff to statutory damages  
of \$100.00 per each such Email, as provided in 15 U.S.C. §7706 (g) (3).
20. Defendants did willfully and knowingly so act in violation of the provisions of 15  
U.S.C. §7701 et seq.

**SECOND CAUSE OF ACTION – CEMA**

**RCW 19.190.010 - .070**

21. On the basis of the facts set forth hereinabove, Defendants initiated, conspired with another to initiate, or assisted the transmission of the Emails, and each of them, in violation of RCW 19.190.020, causing damage to Plaintiff FERGUSON as the interactive computer service receiving each such Email in the amount of \$1,000 for each such Email, as provided in RCW 19.190.040 (2).

**THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT**

**Ch. 19.86 RCW**

22. On the basis of the facts set forth hereinabove, Defendants initiated the Emails, and each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing damage to Plaintiff FERGUSON as the interactive computer service receiving each such Email in the amount of \$1,000 for each such Email, as provided in RCW 19.190.040 (2).

**REQUEST FOR RELIEF**

Plaintiff respectfully requests the following relief:

1. Entry of a Judgment against the Defendants in the amount of \$1,100 per Email, plus such other and further damages as may be proved at trial, plus treble damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86 RCW and 15 U.S.C. §7706 (g) (4);

1 2. Entry of a permanent injunction against the Defendants prohibiting the Defendants from  
2 sending or causing to be sent electronic mail messages of any kind or nature to the Email  
3 Addresses using the Whew.com domain.

4 3. Such other and further relief as the Court deems just and equitable in the premises.

5 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2007.  
6

7 i.JUSTICE LAW, P.C.

DOUGLAS E. MCKINLEY, JR

Attorney at Law

8  
9 /S/ Robert J. Siegel

/S/ Douglas E. McKinley, Jr.

10 Robert J. Siegel, WSBA #17312  
Attorney for Plaintiffs

Douglas E. McKinley, Jr., WSBA#20806  
Attorney for Plaintiffs

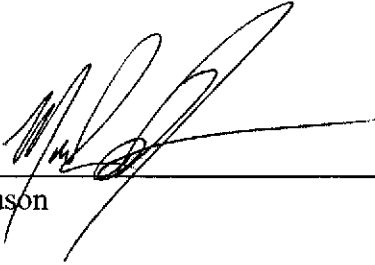
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25 COMPLAINT FOR DAMAGES, PENALTIES, ETC. -  
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**i.Justice Law, PC**  
**PO Box 25817**  
**Seattle, WA 98165-1317**  
**Phone/Fax: 888-839-3299**

**VERIFICATION**

I, Mark Ferguson, Plaintiff in the above-entitled action state and swear under penalty of perjury under the laws of the State of Washington, that I have read the Complaint, and am familiar with the contents thereof, and believe same to be true and accurate.

Signed this 25th day of July, 2007, at Tacoma, Washington.

A handwritten signature in black ink, appearing to read 'Mark Ferguson', is written over a horizontal line.

Mark Ferguson